

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JOSE MAGANA ZAVALA

PETITIONER

V.

CAUSE NO. 3:17-CV-00709-CWR-LRA

WARDEN LARRY SHULTS

RESPONDENT

ORDER

Before the Court is petitioner Jose Magana Zavala's objection to the Report and Recommendation (R&R) of United States Magistrate Judge Linda R. Anderson. Docket No. 18. After considering the facts, arguments, and applicable law, Judge Anderson recommended dismissing Zavala's petition seeking habeas relief under 28 U.S.C. § 2241. Docket No. 17.

Zavala primarily argues that the R&R erred by concluding that he failed to make the showing necessary to bring his claims under the savings clause of 28 U.S.C. § 2255(e), a statutory provision that allows a prisoner "who had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law may negate" to seek post-conviction relief under 28 U.S.C. § 2241. *Reyes-Requena v. United States*, 243 F.3d 893, 903 n.24 (5th Cir. 2001) (citing *In re Dorsainvil*, 119 F.3d 245, 251 (3d Cir. 1997)). He contends that his claim is not barred because the use of his prior state conviction in calculating his sentence is unconstitutional, violates due process, and is foreclosed by circuit law.

To seek such relief, however, Zavala must do so in the district court in which he was sentenced. This Court lacks jurisdiction to review a § 2241 petition that challenges the validity of a sentencing enhancement. *In re Bradford v. Tamez*, 660 F.3d 226, 230 (5th Cir. 2011). Fifth Circuit case law is clear that claims related to sentencing determinations do not fall within the

savings clause. *Tamez*, 660 F.3d at 230; *see, e.g., Preston v. Ask-Carlson*, 583 F. App'x 462, 463 (5th Cir. 2014) (collecting cases).

For these reasons, this Court hereby adopts, as its own opinion, the R&R of the Magistrate Judge.

IT IS HEREBY ORDERED Jose Magana Zavala's habeas petition is dismissed for lack of jurisdiction. No certificate of appealability shall issue. A separate Final Judgment is forthcoming.

SO ORDERED, this the 4th day of September, 2020.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE